

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CALEB J. AZUCENA,

Plaintiff,

v.

RUNJYIN,

Defendant.

Case No. [23-cv-03234-HSG](#)

**ORDER GRANTING IN PART AND
DENYING IN PART REQUEST FOR
EXTENSION OF TIME TO EFFECT
SERVICE ON DEFENDANT RUNJYIN**

Re: Dkt. No. 13

Plaintiff has filed a *Bivens* action against United States Customs and Border Protection agent Runjyin. On April 22, 2024, the Court informed Plaintiff that the United States Marshal had been unable to effect service on defendant Runjyin. The United States Marshal had been informed by the Customs and Border Protection (“CBP”) that there was no employee with Runjyin as either a first or last name. Dkt. No. 12. The Court ordered Plaintiff to, by May 19, 2024, either effect service on defendant Runjyin or submit to the Court sufficient information to identify and locate defendant Runjyin such that the Marshal is able to effect service. *Id.* The Court informed Plaintiff that failure to comply with this deadline would result in the action being dismissed for failure to effect service pursuant to Fed. R. Civ. P. 4(m). Plaintiff has requested an extension of time to July 15, 2024 to comply with this deadline, stating that Runjyin was the name on the individual’s government-issued badge, and that he has “no means” to comply with the Court’s order. Dkt. No. 13.¹ Plaintiff has not explained why granting him a two-month extension of time would allow him


¹ In this pleading, Plaintiff also states that he has filed two state court actions that are currently stayed pending the resolution of this action. Plaintiff has not indicated the subject matter of these state court actions. However, the Court cautions Plaintiff that duplicative or repetitious litigation of virtually identical causes of action is subject to dismissal under 28 U.S.C. § 1915 as malicious. *Bailey v. Johnson*, 846 F.2d 1019, 1021 (5th Cir. 1988). An *in forma pauperis* complaint that merely repeats pending or previously litigated claims may be considered abusive and dismissed

1 to effect service, and according to Plaintiff's request for an extension of time, he is unable to
2 determine the individual's correct name so that the United States Marshal can effect service. The
3 Court therefore DENIES the request for an extension of time to July 15, 2024 to comply with the
4 Court's April 22, 2024 Order, but, in the interest of justice, GRANTS Plaintiff an extension of
5 time to June 17, 2024 to either effect service on defendant Runjyin or submit to the Court
6 sufficient information to identify and locate defendant Runjyin such that the Marshal is able to
7 effect service. Failure to comply with the deadline in this order will result in the action being
8 dismissed for failure to effect service pursuant to Fed. R. Civ. P. 4(m) without further notice to
9 Plaintiff.

10 This order terminates Dkt. No. 13.

11 **IT IS SO ORDERED.**

12 Dated: 5/15/2024

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14 HAYWOOD S. GILLIAM, JR.
15 United States District Judge
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27 under § 1915. *Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995); *Bailey*, 846 F.2d at
28 1021. An *in forma pauperis* complaint repeating the same factual allegations asserted in an earlier
case, even if now filed against new defendants, therefore is subject to dismissal as duplicative.
Bailey, 846 F.2d at 1021.